IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Criminal Appeal No.908/2003

Mangilal S/o Radhakishan
...Accused-appellant
Versus
State of Rajasthan
...Respondent

Date of Judgment :::: 13th March, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Rajesh Goswami, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
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//Reportable//

By the Court:-

Accused-appellant Mangilal S/o Radhakishan has preferred this appeal challenging the order of his conviction, dated 9th of June, 2003, passed by the Additional Sessions Judge (Fast Track) No.1, Bundi, in Sessions Case No.85/2001, whereby he has been convicted and sentenced under Section 376 I.P.C. to 7 years rigorous imprisonment and a fine of Rs.5000/- (Rupees five thousand); in default of payment of fine, to further undergo one month's

additional simple imprisonment.

Briefly stated the facts of the case are that a written-report, Exhibit P-11, was lodged by PW-6 Kalu Lal, the husband of prosecutrix Madi Bai (PW-8) at Police Station Kotwali – Bundi, alleging therein that on 22.12.1995, accused Mangilal committed forcible sexual intercourse with his wife. The police registered FIR No.317/1995 (Exhibit P-12) under Section 376, IPC, and started investigation.

After completion of investigation, a charge-sheet was filed against the accused. The trial court framed charge against the accused for the offence under Section 376, IPC, which was denied by him and the trial was claimed.

The prosecution and the defence, both, produced oral as well as documentary evidence. The trial court, after considering the evidence on the record and upon hearing both the parties, convicted and sentenced the accused-appellant, as mentioned above.

The learned counsel for the appellant, Shri Rajesh Goswami, contended that as per the written-report (Exhibit P-11) itself it is clear that the offence of rape was alleged to have been committed by accused in presence of PW-6 Kalu Lal, the husband of the prosecutrix herself, which is not believable

and the said allegation becomes doubtful, and further that the statement of the prosecutrix is not corroborated with the medical evidence. He contended that as per Exhibit P-4, the medical-report of Madi Bai, no external or internal injury was found on her person except one abrasion on her left forearm, which was simple in nature by blunt object. It is contended that as per the Exhibit P-4, which is proved by PW-3 - Dr. O.P. Verma, it is clear that no definite opinion was given regarding commission of rape. He, therefore, contended that in absence of corroboration of statement of the prosecutrix with the medical evidence, it will be unsafe to base the conviction of the accused and the trial court has wrongly convicted him.

So far as semen stain on the cloths are concerned, he contended that the Hon'ble Supreme Court in Rahim Beg Vs. State of U.P. (1072) Cri.L.J. 1260, held that semen stain can exist because of a variety of reasons and would not necessarily connect him with the offence of rape. He further contended that there is no evidence to prove that semen found on the clothes were of accused as the same were not got compared by cogent evidence. In this connection he also referred to the decision in the case of Tulsi Ram Vs. State of Rajasthan – 2000 Cri.L.J.1634

(Rajasthan). He therefore contended that the accused is entitled to the benefit of doubt and is liable to be acquitted.

Per contra, the learned Public Prosecutor supported the judgment passed by the trial court and contended that this is a case where the accused was friend of Kalu Lal (PW-6) and both took their meals together and accused being known to PW-6 Kalu Lal, he was allowed to sleep at the residence of Kalu Lal itself and in the night he committed the offence of rape with Madi Bai W/o Kalu Lal. It was contended that the statement of the prosecutrix is corroborated with the statement of Kalu Lal (PW-6) and Hukam Chand (PW-2). So far as injury-report (Exhibit P-4) is concerned, it is contended that there is an abrasion on the person of the prosecutrix, but the statement of the prosecutrix is trustworthy and it does not require any corroboration by medical evidence particularly when her statement is corroborated by other evidence i.e. the statement of PW-2 and PW-6. It is further contended that PW-6 Kalu Lal and accused both were friends, therefore, there was no question of false implication of the accused in the crime and there is no reason to disbelieve the testimony of the prosecutrix Madi Bai in the facts and circumstances

of the present case. Therefore, it was contended that there is no merit in this appeal and the same be dismissed.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court and also the citations as referred during the course of arguments.

PW-6 Kalu Lal lodged a written-report Exhibit P-11 at Police Station Kotwali along with his wife Smt. Madi Bai (PW-8) wherein it was stated that he was the counsel for accused Mangilal as he had filed a suit for divorce on behalf of Mangilal against his wife Raj Kumari and the said case was fixed on 22.12.1995 in the court of District Judge, Bundi. The accused came at his residence at about 5.00 PM to take some legal opinion. The accused told him that he is hungry and thirsty. The accused was belonging to his nearby village and he was his friend, therefore, he believed on him and after taking meals at his residence, the accused slept with him. It was further mentioned in the written report that accused made a complaint about vomiting to him and he requested his wife to put switch of the light on and soon thereafter the accused caught-hold-of his wife and ravished her. His wife raised hue and cry and thereafter he also pushed him and

caught-hold-of him. His wife gave slipper blows on the person of accused and thereafter the report was lodged. Exhibit P-1 is the seizure memo of clothes (Lahanga, Lugda and Blouse) of the prosecutrix Madi Bai. Exhibit P-2 is the seizure memo of broken bangles of the prosecutrix which were recovered/collected from the place of incident. Muffler, shoes and coat of the accused were also seized from the place of the incident vide Exhibit P-2. Site-plan of the place of incident Exhibit P-3 was also prepared, wherein a reference was given about recovery of shoes, muffler and coat of the accused as well as broken bangles of the prosecutrix. Exhibit P-4 is the injury-report of Madi Bai, according to which, a abrasion 2x1 cm (clotted blood present) at Anterior aspect of lower part of left forearm simple blunt, duration of injury within 0-24 hours.

The age of the prosecutrix was given about 18 years but below 20 years. Exhibit P-6 is the medical-report of accused Mangilal, wherein eight injuries were mentioned on his person and it was opined that nothing can be suggested that male examined is not capable for intercourse. The underwear of accused Mangilal was seized vide recovery-memo Exhibit P-8, wherein semen stains were

found at three places which were marked as Exhibit A-1, A-2 and A-3. As per the FSL Report dated 8.12.1997 (Exhibit P-14), human semen was detected in Exhibit No.1 (from packet marked A) and 2 (from B). Semen was not detected in Ex.No.3 and 4 (from B). Exhibit No.1 of Packet Parcel No.A is underwear. Exhibit No.2 of Packet Parcel No.B is Lahanga. The semen was not detected in Exhibit No.3 and 4 from Packet Parcel No.B i.e. blouse and Lugda.

The material ocular evidence in the present case is the statements of PW-2 Hukam Chand, PW-6 Kalu Lal, PW-8 Madi Bai and PW-10 Ram Chander, the Investigating Officer. PW-8 Madi Bai, in her statement, stated that about six years ago she was living in rented house of Jodhraj Singh. At about 9.00 PM, she was sleeping. Her husband, her nephew Hukam Chand and accused were also present. Hukam Chand was studying in his room. It was Friday, therefore, she was having 'fast', and she had already taken her meal. Her husband Kalu Lal, nephew Hukam Chand and accused Mangilal took their meals together. She was sleeping on the floor spreading her bed, and her husband and accused Mangilal were sleeping on one bed. Accused complained of vomiting and thereafter her husband told her to switch on the light. She switched on the light and all of a sudden

accused Mangilal caught-hold of her and committed forceful sexual intercourse with her. She raised hue and cry. Her husband also came in her rescue and pushed the accused. Thereafter she and her husband, both, went to lodge the report at the police station. She was cross-examined by the counsel for the accused, in detail, and in her lengthy cross-examination she stated specifically about commission of offence with her by the accused. There are number of contradictions in her statement, which have been pointed out by the learned counsel for the appellant, but, in view of the fact that her statement was recorded on 23.3.2002 and she was cross-examined on 14.8.2002 and 30.10.2002 with a gap of about six to seven years, those contradictions are insignificant.

PW-6 Kalu Lal is the eye witness of the incident, but, in view of the fact that he is the interested witness being the husband of the prosecutrix, his testimony has been scanned minutely and after minute scanning of his statement it is clear that the accused-appellant committed forcible sexual intercourse with his wife Madi Bai and statement of PW-8 Madi Bai is fully corroborated with the statement of PW-6 Kalu Lal.

PW-2 Hukam Chand was also present in the house

at the time of incident, as he was studying there and he also corroborated the statement of PW-8 Madi Bai.

The accused, in his statement, recorded under Section 313, Cr.P.C., contended that he was friend of Kalu Lal and they used to live together since childhood. They also used to take liquor and meat together at number of times. On the date of the incident also both had consumed liquor and meat; when they were taking liquor, PW-6 Kalu Lal told him why he caught-hold of the hand of his wife and thereafter Kalu Lal started beating him. His wife also gave slipper blows on his person. He told his brother Ram Kalyan, who asked them as to why they are beating him and that if he has committed any offence, they should lodge a report. Thereafter he went at Police Station to lodge the report against Kalu Lal and his wife but the Police official told him that he would register the report on his behalf in the morning and detained him at the Police Station.

It is true that PW-3 - Dr. O.P. Verma, who proved the medical-report of the prosecutrix (Exhibit P-4) stated that there was no injury on private parts of the prosecutrix. He had also examined accused Mangilal. The Doctor has stated

that when he was examining Mangilal, a smell of liquor was coming from his mouth. In the medical-report (Exhibit P-4) there is no definite opinion about commission of rape, therefore, the statement of the prosecutrix PW-8 Madi Bail is not corroborated with the medical-evidence and, in these circumstances, the question for determination in the present case is whether the testimony of the prosecutrix PW-8 Madi Bai and her husband PW-6 Kalu Lal inspires confidence of the court and even in absence of corroboration from the medical-evidence the accused can be convicted on the basis of the statements of PW-6 Kalu Lal, PW-8 Madi Bai and PW-2 Hukam Chand.

In Dilip and Another Vs. State of M.P. (2001) 9 SCC 452, the Hon'ble Apex Court held that it is well settled that the sole testimony of the prosecutrix could be acted upon and made the basis of conviction without being corroborated in material particulars. However, the courts in sexual offences should not ignore the rule about the admissibility of corroboration.

In Joseph Vs. State of Kerala (2000) 5 SCC 197, the Hon'ble Apex Court held that though injuries on the body of prosecutrix is not always a must or sine qua non to prove a charge of rape,

having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse, this aspect of the matter cannot be completely lost sight of.

In Sri Narayan Saha and Another Vs. State of Tripura (2004) 7 SCC 775, the Hon'ble Apex Court held that on the sole testimony of the prosecutrix the conviction can be maintained as prosecutrix is not accomplice but a victim of the crime; her evidence must receive the same weight as it attached to an injured witness and it can be accepted without corroboration if the court, keeping in mind that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her, is satisfied that it can act on her evidence. It was further observed that if the victim does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. Para 6 and 7 of the judgment are reproduced as under:-

> "6. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (in short "the Evidence Act") nowhere says that her evidence cannot be accepted unless it is

corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding, the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no

> hesitation in accepting her evidence.
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> 7. The aforesaid position was highlighted in State of Maharashtra v. Chandraprakash Kewalchand Jain (1990) 1 SCC 550 and Kernel Singh Vs. State of M.P. (1995) 5 SCC 518."

In State of H.P. Vs. Asha Ram (2005) 13 SCC 766, the Hon'ble Apex Court held that it is now a sell-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of prosecutrix is more reliable than that of an injured witness. The testimony of victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement. The courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Minor contradictions or insignificant discrepancies in the statement of

the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. The Hon'ble Apex Court also considered its earlier decision in Ranjit Hazarika v. State of Assam (1998) 8 SCC 635 : 1998 SCC (Cri) 1725, and held that non-rupture of hymen or absence of injury on victim's private parts does not belie her testimony. Para 18 of the Judgment in the case of State of H.P. Vs. Asha Ram is reproduced as under:-

> "18. In Ranjit Hazarika v. State of Assam {(1998) 8 SCC 635}, this Court held that non-rupture of hymen or absence of injury on victim's private parts does not belie her testimony. This Court further held that the opinion of the doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. This Court held that the evidence of the prosecutrix was amply corroborated by her mother and father whom she immediately informed about the occurrence."

In Om Prakash Vs. State of U.P. (2006) 9 SCC 787, the Hon'ble Apex Court held that victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. If the totality of the circumstances

appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. Para 13 and 14 of the Judgment are reproduced as under:

> "13. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian woman has a tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members have courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scatting (sic scathing) her own prestige and honour.
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> 14. Of late, crime against women in general and rape in particular is on the increase. It is an

irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its

> responsibility and be sensitive while dealing with cases involving sexual molestation. This position was highlighted in State of Punjab v. Gurmit Singh (1996) 2 SCC 384 : 1996 SCC (Cri) 316."

The above discussion of the legal position in respect of sexual offence, makes it clear that prosecutrix is not accomplice but a victim of the crime and a conviction of accused can be maintained on her sole testimony. Her evidence must receive the same weight as is attached to an injured witness and it can be accepted without corroboration if the court, keeping in mind that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her is satisfied that it can act on her evidence. The Hon'ble Apex Court has also held that if the victim does not have a strong motive to falsely involve a person charged, the court should ordinarily have no hesitation in accepting her evidence.

In view of the above settled position of law in respect of offence relating to rape, the evidence of the prosecutrix PW-8 Madi Bai and PW-6 Kalu Ram have been examined minutely and from their statements charge against accused is fully proved, and from their lengthy cross-examination it has not

come on the record as to what was the motive of the prosecutrix Madi Bai or her husband Kalu Lal to falsely involve the accused and in absence of it, in view of the judgment of the Hon'ble Supreme Court in the case of Sri Narayan Saha and Another Vs. State of Tripura (Supra), there should be no hesitation in accepting the testimony of the prosecutrix PW-8 Madi Bai. So far as the present case is concerned, it is not a case where there is only sole-testimony of prosecutrix against the accused but her testimony is further corroborated by the statements of PW-6 Kalu Lal and PW-2 Hukam Chand.

The learned counsel for the appellant could not point out any motive whatsoever to implicate the accused falsely by the prosecutrix Madi Bai or her husband Kalu Lal. The only contention in this regard on behalf of the accused was that accused was beaten and his brother Ram Kalyan came and asked the victim as well as PW-6 Kalu Lal as to why they have beaten accused Mangilal, and that if he has committed any offence then they should have reported the matter to the police. The submission of the learned counsel for the appellant is that accused also went to lodge the report against Kalu Lal and Madi Bai at the Police Station for giving him beating by complainant-party on his person and that is why the

present case was lodged by them against the accused. The learned counsel for the accused has also referred the statement of the accused recorded under Section 313, Cr.P.C., in this connection and contended that the accused has specifically stated that he went to lodge the report against Kalu Lal at the Police Station, but his report was not lodged and he was detained at the Police Station on the report (Exhibit P-11) of the prosecutrix Madi Bai and her husband PW-6 Kalu Lal, lodged by PW-6 Kalu Lal. If the statement of accused as well as cross-examinations of PW-6 and PW-8 in this regard are examined minutely then it is established that the accused has committed the crime and he was given beating, but it is not going to help the accused in any manner, rather it goes against the accused connecting the accused with the crime.

In these circumstances I find that no motive has been established on the part of the prosecutrix or Kalu Lal to involve the accused in the charge falsely in the present case, who was friend of Kalu Lal. And, in absence of any motive of the complainant-party in this regard, there should not be any hesitation in accepting the testimony of the prosecutrix. PW-8 Madi Bai has specifically stated in her statement that she was ravished by accused

Mangilal. The name of the accused was mentioned in the written-report (Exhibit P-11) also, which was lodged immediately after the incident took place. The statement of PW-8 Madi Bai is corroborated by PW-6 Kalu Lal and PW-2 Hukam Chand. Even if there is no corroboration of the statement of Madi Bai with the medical-report then it is not fatal to the prosecution case, and accused can be convicted on the basis of the statement of the prosecutrix PW-8 Madi Bai alone, whose statement inspires confidence of the court as the same is found to be trustworthy and can be made basis for conviction of the accused.

In view of the above discussion, I do not find any force in any of the contentions of the learned counsel for the accused-appellant.

There is no merit in this appeal and the same is accordingly dismissed.

(Narendra Kumar Jain) J.

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